

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 599 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANGHVI BHARATKUMAR

Versus

R.B.CHRISTAIN

Appearance:

MR ADIL MEHTA for Petitioner

MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 15/07/97

ORAL JUDGEMENT

The petitioner was tried before the 1d.JMFC, Mandvi, District Kachchh, in Criminal Case No. 428 of 1984 for the offence punishable under Section 7 of the Prevention of Food Adulteration Act read with Section 16 thereof. The offending article was Peppermint which was purchased by the complainant, Food Inspector Shri

Christian, on 28.6.1984 of the quantity of 900 gm. after obtaining the receipt and making the payment for the same. These documents are at Exh.11 and 12 of the trial Court record. On analysis, the article was found to be adulterated. The report of the public analyst on this point is not at all challenged when the notice thereof was served upon the petitioner. It has been produced eventually in the cross-examination of the petitioner when he offered himself as a witness in his own defence before the trial Court.

The defence before the trial Court was that of total denial. Even the fact of raid was disputed.

No doubt, ld. Advocate Shri Mehta appearing for the revision petitioner is right when he reads the deposition of panch witness Pitambar Verabhai - Exh.25 that, when he was called at the shop of the petitioner, the muddamal article was already packed and a panchnama was drawn. However, looking to the deposition of the petitioner himself and when it is evaluated in light of other documents on record, including the said receipt of the public analyst which has been produced at Exh.36, it becomes clear that the Inspector who visited the shop of the petitioner took the muddamal article and sent the same for analysis.

After the result of the analysis was made known to the petitioner, he did not opt for getting the sample examined which is a right given to the accused under the said Act. The result of the analysis thus became final.

In this background when the ld. Magistrate convicted the accused and awarded six months sentence, the petitioner carried the matter before the ld. Sessions Judge of Kachchh at Bhuj by way of Appeal No.23 1986. The matter was heard by the ld.Sessions Judge who by his judgment dated 9th December 1988 dismissed the appeal.

The ld.Sessions Judge, in his elaborate typewritten judgment running into 20 pages, has discussed each and every factual aspect and has dealt with all the points that were urged before him. The dispute as to non compliance of Rule 10(7) framed under the said Act has also been dealt with in paragraph 36 of the judgment. In view of the fact that, both the Courts below have come to concurrent finding of facts, very limited scope is left to this Court in this revision application.

Shri Mehta, therefore, argued at length that, there is non-compliance of Rule 10(7) for which he took

recourse to the said deposition of the panch witness. However, as stated above, the deposition of the petitioner himself leave no room for doubt and when the Food Inspector has also stood the test of cross examination, the said point of non compliance of Rule 10(7) is not made out.

Alternatively, it was pleaded that, six months' imprisonment be reduced and be substituted by suitably modifying the period and thus, the petitioner be shown leniency. In this regard also, in my opinion, no case is made out. Hence, this prayer is also rejected.

The net result is that the revision application is rejected. Rule is discharged. The petitioner shall surrender to his bail within eight weeks from today.

sreeram.